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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4963 OF 1986

Trimbak J. Bedge
since deceased, through his
legal heirs:
1A) Damayanti Trimbak Bedge
1B) Mukund trimbak Bedge
1C) Milind Trimbak Bedge
1D) Makarand Trimbak Bedge
AB to 1D are minors and
Occupation:Education,
through its natural guardian
Smt.Damayanti Trimbak Bedge
all residing at Anna Bhau
Sathe Nagar, near Indira Kanya
Shala, Mohol, Tal.:Mohol,
Dist.: Solapur ... Petitioners

V/s.

1. Netaji Vidya Vikas Mandal
Moholo, At & Post: Mohol
Dist.: Solapur

2. Presiding Officer
School Tribunal, Pune Region
Pune ... Respondents

Mr.G.S. Godbole for Petitioners
Mr.T.D. Deshmukh with S.Shelke h/f A.A. Kumbhakoni for
Respondent No.1

CORAM: **SMT.NISHITA MHATRE, J.**

JUDGMENT RESERVED ON: **AUGUST 26, 2005**
JUDGMENT PRONOUNCED ON: **OCTOBER 24, 2005**

JUDGMENT:

. The Writ Petition challenges the order of the School Tribunal dated 21.9.1984 and the order in the Miscellaneous Application No.3 of 1984 passed on

11.4.1985.

2. The original Petitioner has died during the pendency of the writ petition and his heirs have been brought on record. Petitioner No.1A is his wife and Petitioner Nos.1(B), (C) and (D) are his children. However, for the purpose of convenience, the original Petitioner will be referred to as the ‘Petitioner’ hereinafter.

3. On 13.7.1981, the Petitioner was appointed as an Assistant Teacher with the School run by Respondent No.1. He took charge on 18.7.1981 and worked as a mathematics teacher for 5th to 8th standard. It appears that the father in law of the Petitioner had donated some amount to the institution. On 8.3.1982, a report was submitted by the President of the Institution to the Headmaster that the work of the Petitioner was satisfactory. An experience certificate was also issued to the Petitioner on 21.9.1982 by the Headmaster. However, apparently some differences arose between the father-in-law of the Petitioner, who was one of the members of Managing Committee and the other members of the Managing Committee which resulted in the Petitioner being targeted by the Institution. On 15.10.1982, the Petitioner informed the Education Officer, Zilla

Parishad, Solapur that he was being harassed by the Chairman of the Society since he was unable to provide any further donation. The Education Officer called for an explanation from the headmaster of the School on 11.10.1982. The Respondent No.1 called upon the Petitioner to explain his conduct as to why he had entered into correspondence with the Government officers directly and not through the proper channels. Not being satisfied with the explanation tendered by the Petitioner, an order of termination was issued to him on 23.4.1983 by the Chairman of the School committee. He was informed that his services were being terminated from the next day. On 30.4.1983, the Petitioner replied to the Chairman pointing out that he had not received the letter dated 23.3.1983 referred to in the order of termination. This letter dated 23.3.1983 was then sent to the Petitioner. The letter mentioned that his work was unsatisfactory and that his services would be terminated from 23.4.1983.

4. The Petitioner, therefore, filed an appeal before the School Tribunal being Appeal No.72 of 1983. He contended in his appeal that his services were being terminated in violation of the provisions of the Act. It was pleaded inter alia that he was appointed in a clear and permanent vacancy, on probation, and therefore

his services could not be terminated without giving him a month's notice. The Petitioner also contended that the termination of his services amounted to an illegal dismissal because no enquiry was held prior to terminating him from service. The Respondent No.1 in its reply to the appeal contended that the Petitioner had in fact been issued one month's notice prior to the letter terminating his services. It was also pleaded that the conduct of the Petitioner was not satisfactory and that it was therefore necessary for the Petitioner's services to be terminated.

4. By an order dated 21.9.1984, the School Tribunal dismissed the appeal filed by the Petitioner. The School Tribunal was of the view that the Petitioner's services could be terminated without furnishing any reason since he was not a probationer but a temporary employee. The School Tribunal was of the view that the very fact that the Petitioner had made representations directly to the Education Officer indicated that his services were liable to be terminated under Rules framed under the Maharashtra Employees of Private Schools Act. However, the Tribunal did not take into consideration the fact that the Petitioner had applied for leave on 28.4.1983 for the period from 2.5.1983 to 30.5.1983 and this leave had been sanctioned on the same day i.e.,

28.4.1983. The Tribunal has not considered this aspect at all.

5. Being aggrieved by the order of the School Tribunal, the Petitioner preferred a review petition which was registered as Miscellaneous Application No.3 of 1984. The Tribunal came to the conclusion that no Review Petition was maintainable and hence, dismissed the same. Both these orders of the Tribunal have been challenged in this petition.

6 The reasoning of the Tribunal for rejecting the Review Petition cannot be faulted. There is no provision under the MEPS Act for filing a review. It is trite law that unless there is a specific provision in the Act, empowering the Tribunal to review its own decision, the Tribunal cannot entertain a review Petition. The order in Miscellaneous Application No.3 of 1984 must therefore, be upheld.

7. On considering the merits of the case at hand, it must be said that the Tribunal has erred in concluding that Petitioner’s termination from services was valid. There can be no dispute that the Petitioner was appointed as a probationer. He was appointed against a clear vacancy and had worked in the post

continuously from 13.7.1981 till his services were terminated in 1983. Therefore, under section 5(2) of the MEPS Act, he was entitled to a notice before his services were terminated. The provisions of section 5 are very clear and are mandatory. If a notice is not issued under section 5, it could not be said that there is a valid termination in the eyes of law. In fact, the termination itself would be inoperative and void. In the present case, the Petitioner has denied having received the letter on 23.3.1983 at any point of time prior to the receipt of the order of termination dated 23.4.1983. It was only after the receipt of termination order that the Petitioner submitted his representation and pointed out that he had been discharged from service without following due process of law. The Petitioner further stated that he had not received the letter dated 23.3.1983 referred to in the order of termination. It was only thereafter that Respondent No.1 thought it fit to serve the Petitioner with a copy of that letter. In the meantime, the Petitioner had already been sanctioned leave for the period from 2.5.1983 to 30.5.1983 on 28.4.1983. The Petitioner in his affidavit before the School Tribunal had pointed out that there were certain interpolations in the despatch book showing that on 23.3.1983 a letter had been issued at serial No.188 to the Petitioner. The Petitioner denied his signature

against entry No.188 and contended that the document was fabricated. The Tribunal ought to have considered these factors before concluding that the order of termination was illegal. Therefore, in my view, the Tribunal has not appreciated the fact that Respondent No.1 had violated the provisions of section 5 of the MEPS Act while terminating the services of the Petitioner.

8. The contention of the Respondent that the Petitioner being a probationer, his services could be terminated at any point of time if his work was found to be unsatisfactory is without merit. The circumstances of the present case do not warrant such a conclusion. Undisputedly, Respondent No.1 had not only issued a certificate of satisfactory work but also issued a similar certificate and experience certificate to the Petitioner in June and September 1982 respectively. There was no letter issued to the Petitioner showing that his work was unsatisfactory. However, the Tribunal has considered that the work of the Petitioner was assessed and it was found to be unsatisfactory. This assessment according to the Tribunal, was undertaken on 20.9.1982, a day prior to the Headmaster issuing the experience certificate to the Petitioner. The certificate showing satisfactory work was issued in July 1982. Therefore, it is surprising that within two

months, the Petitioner's work had deteriorated to such an extent that it was found to be unsatisfactory.

9. Exhibit 11 which was filed before the Tribunal by Respondent No.1 indicated that the behaviour of the Petitioner was not upto the mark. The acts alleged against the Petitioner in Exhibit 11 would amount to misconduct. Therefore, it was necessary for Respondent No.1 to have held an enquiry against the Petitioner. Respondent No.1 chose not to do so and instead took recourse to the provisions of section 5 by contending that the Petitioner being a probationer could be terminated from service at any time if and his work was found to be unsatisfactory. In my view, the entire attitude of Respondent No.1 appears to be malafide and aimed at removing the Petitioner from services without any valid reason. Had the Petitioner's services in fact been terminated on 23.4.1983 as stated in the order of termination leave would not have been sanctioned to him on 28.4.1983. The Judgment of the Tribunal, therefore, must be set aside.

10. The learned Advocate for the petitioner submits that it was necessary for the Respondent to prove that the letter dated 23.3.1983 had in fact been served on the Petitioner. There is no proof of the Petitioner

having received that letter. There is no evidence on record to indicate that the endorsement against entry No.188 in the despatch book was made by the Petitioner. According to the learned Advocate, the Tribunal could not have compared the signature on his own and concluded that the endorsement was in fact made by the petitioner without an handwriting expert comparing the signature. He relies on the judgment in the case of *State (Delhi Administration) v/s. Paliram,* **AIR 1979 SC 14.** He submits that the motive for terminating the services of the petitioner ought to have been ascertained and if the motive for terminating the services was malafide, the termination order ought to be set aside. Reliance is also placed on the judgment in *Chandra Prakash Shahi v/s. State of U.P. & Ors.*, **AIR 2000 SC 1706.**

11. The Respondent submits that when the services of a probationer are terminated for unsatisfactory service, they may be terminated without prior intimation since the issuance of one month’s notice or wages in lieu thereof is not a mandatory requirement which would invalidate or vitiate the termination. Reliance is placed on the judgment in *Oriental Insurance Co. Ltd. v/s. T.Mohammed Raisuli Hassan,* **1993(1) SCC 553.** Furthermore, he submits that a probationer need not be communicated any adverse remarks which are made against

him. Rule 15 of the MEPS Rules does not contemplate communication of such adverse remarks and therefore, assuming that the Petitioner's services had been terminated not only for unsatisfactory work but also on account of his bad conduct and misbehaviour, there was no need to communicate these remarks to him. Reliance is placed on the judgment in *Savitribai Fule Shikshan Prasarak Mandal & Anr. v/s. Dhananjay Deoraoji Diwate & Ors.*, **2004(3) Mh.L.J. 18.** As regards the submission made on behalf of the Petitioner that the handwriting expert ought to have been examined, it is urged on behalf of the Respondent that the powers of the School Tribunal are akin to the Civil Court and, therefore, it can exercise the same powers as prescribed under section 73 of the Evidence Act. The learned advocate supports this submission by judgment of this Court in *Mohammad Salam Anamul Haque v/s S.A. Azmi & Ors.*, **2001(1) Mh.L.J. 249.** He then submits that the termination of service of a probationer on the ground of unsatisfactory work before the expiry of the period of probation need not be preceded by an enquiry as scuh a termination cannot be construed as a punitive one. No stigma was cast on the employee and therefore, it was not necessary for the respondent to hold any enquiry. He supports this submission by the judgment in the case of *Premier Education Society & Ors. v/s. T.K. Kripalani & Anr.*,

1988 M.L.J. 894.

12. The first question which will have to be considered is whether the Tribunal has arrived at a proper conclusion that notice of termination of service dated 23.3.1983 was served on the Petitioner. The Petitioner has denied having received this notice. According to Respondent No.1, the notice was issued to the Petitioner and has been received by him. To prove this, they produced the despatch book and submitted that the signature which is found against the entry made at letter No.188 in the despatch book shows that the Petitioner himself had received a copy of that letter. The Tribunal compared the alleged signature of the Petitioner on the despatch book and his signature on the appeal memo and came to the conclusion that the Petitioner had indeed received the same. The judgments relied on by both Mr.Godbole in *Ajit Savant Majagavi v/s. State of Karnataka*, **AIR 1997 SC 3255** and *State (Delhi Administration)* (supra) indicate that there is no specific bar making it impermissible for the Court to compare a disputed signature with a known signature of party. However, the Apex Court has sounded a note of caution in both these judgments that it would be more appropriate to take assistance and opinion of an handwriting expert. The Apex Court has observed that as

a matter of prudence and caution a Judge should hesitate to base his findings with regard to the identity of a hand writing specimen which forms the sheet anchor of a prosecution case against the person accused of an offence, solely on a comparison made by himself. In the present case,the dispute as to whether the Petitioner has received the notice which is mandatory under section 5 of the MEPS Act is a question which goes to the root of the matter. Therefore, it was necessary for the Tribunal to refer the disputed signature to a handwriting expert. In my view, the respondent has failed to prove that it has served the Petitioner with one month's notice as required under section 5 of the Act. This notice being a mandatory provision of law, any termination in breach of section 5(3) would be void and illegal. Consequently, the termination order dated 23.4.1983 must be held to be illegal. The submission of the respondent that the order of termination was preceded by a notice of one month is unbelievable as the school has sanctioned the leave sought by the Petitioner even thereafter.

14. The submission of the learned Counsel for the Respondent that the notice required to be issued under section 5(3) is not mandatory and cannot be accepted. Merely because the section provides for payment of one

month's salary in lieu of notice it would not mean the provision for giving a notice is not a condition precedent for effecting termination. Although issuance of a notice of one month can be substituted by payment of one month's salary there is nothing on record to indicate that such payment of salary was made to the Petitioner in order to infuse life into the order dated 23.4.1983. The reliance placed on the judgment in the case of *Oriental Insurance Co. Ltd.* (supra), does not carry the case of the Respondent any further.

15. The order of termination dated 23.4.1983 was obviously a ruse in order to get rid of the Petitioner. It is the submission of the respondent that the services of a probationer may be terminated at any point of time if his work or behaviour was not satisfactory. However, in the present case, there is not even a semblance of such an accusation contained in the order of termination dated 23.4.1983. The notice of one month which is required to be issued under section 5(3) is obviously with a view to allow the employee to improve his behaviour or work. Since that notice was not received by the Petitioner, he had no such opportunity. In fact, the order of 23.4.1983 only intimates the petitioner that his services were to be terminated from the next date. Under Rule 15(6), the performance of an employee

appointed on probation is to be objectively assessed by the head during the period of his probation and record of such an assessment is to be maintained. There is no material on record to indicate that this record was produced before the School Tribunal in order to establish that a fair assessment had been made by the Head of the School. In fact, on 5.7.1982, the Headmaster had issued a certificate showing that the work and behaviour of the Petitioner was satisfactory. This letter was produced on record before the Tribunal. However, there is nothing to show as to whether subsequently, there was any reassessment of the Petitioner's work or behaviour resulting in his termination from service. The judgment in the case of *Savitribai Fule Shikshan Prasarak Mandal & Anr.* (supra), is of no consequence.

16. Although the order of termination in the present case does appear to be innocuous it is obvious that the order of termination has been issued because of certain differences arising between the Petitioner's father-in-law and the institute. Immediately after the Petitioner complained to the Education Officer, Respondent No.1 took action against him which culminated in his termination from service. Termination of service of a probationer on the ground of unsatisfactory work or

behaviour before the expiry of the period of probation may not be invalid for want of an enquiry, but there must be some assessment of his work and behaviour which would be able to stand the test of scrutiny, if called in question. In the present case, this assessment was not produced before the Tribunal and hence, it is obvious that the reasons of termination of his services were other than for unsatisfactory work or conduct. Therefore, the order of the Tribunal must be set aside.

17. As a consequence, the Petitioner must be reinstated in service with continuity and full backwages. Admittedly, the Petitioner has expired during the pendency of the litigation. Therefore, the heirs and legal representatives of the Petitioner who are on record at serial No.1A to 1D would be entitled to backwages upto the date of the death of the Petitioner.

18. Rule made absolute accordingly with no order as to costs.